

## JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, I began this year challenging the Senate to maintain the pace it set in the last weeks of the last session in which it confirmed 27 judicial nominees in 9 weeks. Instead, the Senate has confirmed only 31 nominees so far this year—instead of the 54 it should have if it had maintained last year's pace.

I reissue my challenge for the remaining 10 weeks of this session: The Republican Senate can confirm another 30 nominees by the end of the session if it will just work at the pace it achieved in connection with the President's radio address last year.

I thank the Majority Leader for calling up the nominations of Howard Matz and Victoria Roberts. With their confirmations, and I do believe that they should and will be confirmed, the Senate will have acted on only 33 federal judges at a time in which the federal judiciary has experienced 103 vacancies, many of longstanding duration. Indeed, Ms. Roberts would fill a judiciary emergency vacancy. We will have 45 judicial nominations still pending before the Senate or the Judiciary Committee, some which were first received over three years ago.

There are currently nine other qualified nominees on the Senate calendar having been reported favorably by the Judiciary Committee. I deeply regret that the entire Senate Executive Calendar is not being cleared and the Senate is not being given the opportunity to vote on all 11 nominees awaiting Senate action.

The nomination held up the longest is that of Judge Sonia Sotomayor to fill a critical vacancy on the Second Circuit, a Circuit whose Chief Judge has declared an emergency situation, canceled hearings and taken the extraordinary step of proceeding with 3-judge panels including only one Second Circuit judge. Chief Judge Winter recently issued his annual report in which he notes that the Circuit now has the greatest backlog it has ever had, due to the multiple vacancies that have plagued that court.

In addition, there are 36 nominees pending before the Committee and more nominees being received from the President every week. I hope that the Committee will schedule prompt hearings for each of the judicial nominees currently pending in Committee and the nominees we expect to be receiving over the next several weeks so that they may have an opportunity to be considered by the Committee and confirmed by the Senate. At the rate of six nominees a hearing, the Committee needs to schedule at least six more hearings this summer for currently pending nominees.

The Senate continues to tolerate more than 70 vacancies in the federal courts with another 11 on the horizon—almost one in 10 judgeships remains unfilled, and, from the looks of things, will remain unfilled into the future unless the Judiciary Committee does a

better job and the Senate proceeds promptly to consider nominees reported to it.

We have held only seven judicial nominations confirmation hearing all year. I recall in 1994—the most recent year in which the Democrats constituted the majority—when the Judiciary Committee held 25 judicial confirmation hearings, including hearings to confirm a Supreme Court Justice.

Nine currently pending nominees for the Courts of Appeals need their hearings and need them promptly if they are to be considered and confirmed this year, only three of those were received in the last 60 days. We have 25 currently pending nominees to the District Courts and only four of those were received in the last 30 days.

Unlike earlier days in the Senate when nominees were not made to wait for weeks and months on the Senate calendar before they could be considered, that is now becoming the rule. Margaret Morrow spent 244 days on the calendar. Patrick McCuskey and Michael McCuskey each spent 144 days on the calendar. The average time on the calendar has gone from a day or two to over 44 days.

I calculate that the average number of days for those few lucky nominees who are finally confirmed is continuing to escalate. In 1994 and 1995 judicial nominees took on average 86 or 87 days from nomination to confirmation. In 1996, that number rose to a record 183 days on average. Some would discount that number because it was a presidential election year, but even they cannot ignore that it shattered the previous record. Last year, the average number of days from nomination to confirmation rose dramatically yet again, and this is the first year of a presidential term. From initial nomination to confirmation, the average time it took for Senate action on the 36 judges confirmed in 1997 broke the 200 day barrier for the first time in our history. It was 212 days. Unfortunately, that time is still growing and the average is still rising to the detriment of the administration of justice. As we begin the day the average time from nomination to confirmation is over 250 days. That is three times the time it took before this slowdown began in earnest.

During the entire four years of the Bush Administration there were only three judicial nominations that were pending before the Senate for as long as 9 months before being confirmed and none took as long as a year. In 1997 alone there were 10 judicial nominations that took more than 9 months before a final favorable vote and 9 of those 10 extended over a year to a year and one-half. Of the judges confirmed so far this year, Hilda Tagle's confirmation took 32 months, Susan Oki Mollway's confirmation took 30 months, Ann Aiken's confirmation took 26 months, Margaret McKeown's confirmation took 24 months, Margaret Morrow's confirmation took 21 months,

and Victoria Roberts will have taken 11 months. An additional nine confirmation this year took more than 200 days.

Last year the President sent us 79 judicial nominations but the Senate completed action on fewer than half of them. The percentage of judicial nominees confirmed over the course of last year was lower than for any Congress over the last three decades and, possibly, at any time in our history.

Left pending were 42 judicial nominees, including 11 who were first nominated in 1995 and 1996, and 21 to fill judicial emergencies. Still pending before the Senate are four nominees first nominated in 1995 and two more first nominated in 1996. There are still eight nominations pending from 1997.

Unfortunately, over the last three years, the Senate has barely matched the one-year total of judges confirmed in 1994 when we were on course to end the vacancy gap. We have not yet made up for attrition over the last two years. I observed at our last nominations hearing that we are not even keeping up with Mark McGwire, the St. Louis Cardinal slugger. In the three months of the baseball season leading up to the All Star game, he has hit 35 home runs. The Senate has had two additional months and confirmed only 33 judges.

I recall in 1992, the last year of President Bush's Administration, the Senate, with a Democratic majority in a presidential election year confirmed 63 judicial nominations. Since obtaining their majority in the 1994 election, the current Republican majority has not achieved that number of confirmation in any year. Indeed in the presidential election year of 1996, the Senate confirmed only 17 judges and none for the courts of appeals.

The Chief Justice of the United States Supreme Court has called the number of judicial vacancies "the most immediate problem we face in the federal judiciary." I have urged those who have been stalling the consideration of the President's judicial nominations to reconsider and to work with us to have the Judiciary Committee and the Senate fulfill this constitutional responsibility. Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges.

The numerous, longstanding vacancies in some courts are harming the federal administration of justice. The people in these districts and circuits need additional federal judges. Indeed the Judicial Conference of the United States recommends that in addition to filling the current vacancies, the Congress should authorize 53 additional judgeships throughout the country, as set forth in S. 678, the Federal Judgeship Act that I introduced in May 1997. That indicates that the work demands of the federal judiciary justify 133 additional judges. There is a clamor for us to fill these vacancies and there is

harm by the Senate's delay and failure to do so.

The Chief Justice of the United States Supreme Court pointedly declared in his 1997 Year End Report: "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary." We have had hearings canceled by both the Second Circuit and the Ninth Circuit due to judicial vacancies. Must we wait for the administration of justice to fail before the Senate will act on the other 45 judicial nominees pending before us? I hope not.

In his most recent report on the judiciary the Chief Justice of the United States Supreme Court observed: "Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994." He went on to note: "The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down."

I hope that the Judiciary Committee and the Senate will proceed to consider and confirm judicial nominees more promptly and without the months of delay that now accompany so many nominations. I hope the Committee will not delay in scheduling the additional hearings we need to hold to consider the fine men and women whom the President has nominated to fill these important positions.

Mr. President, Howard Matz, I am glad to see, was confirmed. He was nominated last October, reported by the committee on April 2.

I thank the majority leader for bringing this up and getting it concluded. Senator BOXER of California showed enormous perseverance and determination in moving this forward. I commend her and her choice. I note that he was confirmed by unanimous vote, 85-0.

Victoria Roberts' nomination has been on the calendar 1 month, pending 11 months. Senator LEVIN has been very strongly supportive of her, and I believe that also was a unanimous confirmation. I commend the Senators involved, and I commend the majority leader.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate returns to legislative session.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from West Virginia.

#### CHESTER TRENT LOTT III

Mr. BYRD. Mr. President, Romulus was the legendary first King of Rome. It was said that he went up to Heaven during a storm. Others have drawn the conclusion that it was during an eclipse of the Sun. In any case, it was a historic event.

When Joshua had his men march around the walls of Jericho, they blew their trumpets at a given signal and the walls came tumbling down. We are told in the Scriptures that it was a long day, a long day, a significant event, perhaps a scientific event, one about which there has been some debate.

I have been informed of a truly significant recent event. I wouldn't say that it is Earth shaking, but who knows? It could eventually be looked back upon as an earthshaking event.

Now, what is this all about? The Senator from Maryland, Mr. SARBANES, is watching and listening with great interest, and so are others. This event, I want to say in the RECORD and for all those who are watching through that electronic eye, this event was about the coming of Chester Trent Lott III, the first grandchild of our distinguished majority leader, and the baby came with the angels on last Saturday evening.

He weighed 7 pounds and 7 ounces—so, you see, those are mystic numbers, 7/7—7 pounds, 7 ounces. He was 19.5 inches in length. Now, these weights and measures are important. They were even important to the barons who forced King John on the meadow at Runnymede on June 15, 1215, to sign the great charter, the Magna Carta, which required that there be a system of weights and measures in the Kingdom. And our illustrious forebears who wrote the Constitution of the United States said that Congress would have the power to fix the standard of weights and measures.

So here to live by that system of weights and measures is a new man, a nova Homo sapiens named Chester Trent Lott III. That is a matter of great significance in the life of our leader.

I congratulate Senator LOTT on this most felicitous happening, this most felicitous occasion. Mr. President, there is nothing, may I say to the distinguished Senator from Massachusetts, Mr. KENNEDY, so wonderful as cradling in your arms—oh, many times I have done it—cradling in your arms a swaddled baby. It awakens in one such an amazing range of emotions. There is nothing like it. It is an experience sui generis—one of a kind. Upon the birth of one's own child, the tremendous joy and relief felt in meeting for the first time this tiny, new person is tempered by a measure of fear. You gaze down at this fragile baby and realize what an awesome responsibility you have assumed. Your baby is small, maybe 7 pounds 7 ounces—and there are smaller babies. They are all small and so fragile, so helpless, and so dependent upon

you for their survival. His skin is as soft as a butterfly's wing, his fingernails as translucent as scraps of rice paper; yet those minute, perfect little fingers grasp yours with such fierce determination! I can feel those little fingers closing around my fingers with such fierce determination—although that experience of having my own daughters do that is now 60 years gone. But the memory is fresh in my mind.

But to become a grandfather—now, that is a higher plateau. Mr. Leader, you are walking a higher plateau of immortality. It is not your first taste of mortality—that came with your son or daughter—but now a more inspiring, promising taste of immortality. To become a grandfather is a completely different experience. There is none of that fear, but all of the joy. That joy is heightened by a deep conviction—a deep conviction that "this is in my image" and in its grandmother's image, too. But it has my genes, it has my chromosomes, it is part of me. I can see it going on into the future and carrying on through life. ROBERT BYRD will never die, I would say. I can say that in more ways than one, but in this situation, my grandchild is part of me.

Tennyson said, "I am a part of all that I have met." But this was known before Tennyson. A grandfather, when he looks upon that child, can say with joy: "This is a part of me; it will never, never die."

That joy is heightened by a deep connection that you feel to the long continuum of countless generations, stretching all the way back from Adam and Eve to you and through you to your child, and now to your child's child. And you can feel the pull of the ancient echoes from the dim and distant past as your arms adjust to the weight of this little, new life in your arms. And you can see into the hazy unknown and murky distant future of continuing, endless generations, when this child of your child will have children who will carry a part of you and a part of everyone in this chain before you into the next century, and beyond.

There is a sense of connectedness and timelessness that allows you to understand your place in the long, slow march of generations that is as difficult to express as it is wonderful to experience.

That political treatise, *The Policraticus*, was written by John of Salisbury in the early part of the 12th century. It told of Prothaonius, who said it was glory enough for him that he had lived a life, of which his "grandson need not be ashamed." It was glory enough for him that he had lived a life of which his grandson need not be ashamed. We grandfathers should try to emulate Prothaonius.

Well, I offer my sincere congratulations to Senator LOTT and best wishes to his new grandson; and, of course, I congratulate Mrs. Lott, about her new grandson, and my wife joins me. I hope the duties of the "grandfather's office" will not prevent the Senator from Mississippi from spending many happy